power was given to a "court or a judge", that power could not be exercised by a Registrar unless the rules so provided. Order 54 rule 12 (a local rule) by necessary implication permitted the hearing of an interpleader summons by a Registrar. The matter before us thus becomes a question of the nature of the determination by the Senior Assistant Registrar of this particular interpleader summons.

The solicitors for the applicant (EAC) did not apply for leave, not because in their view there had been a trial of an issue before the Senior Assistant Registrar but because they had, as they frankly admitted, passed over the provisions of section 68(3) of the Act. When they came to know of these provisions, they did not then stop to consider whether there had been a trial of an issue but they promptly, though in point of time, it was on July 29, 1980, by an amended summons-in-chambers, applied for leave to appeal from the judge who had heard the appeal from the decision of the Senior Assistant Registrar. The judge initially gave leave but after hearing further argument in open court, rescinded the order he had made previously in chambers and withdrew the leave. An application to this court for leave to appeal to us was next refused, after counsel for MIMB had submitted his objection to the granting of the leave for failure to obtain leave prior to the lodging of the appeal. Counsel for EAC took the point that MIMB did not object when served with the notice of appeal and only did so on the application for leave.

At the hearing of the application before us, counsel contends that perhaps leave is not required, presumably because there had been a trial of an interpleader issue. But it is settled law that whenever the court or judge decides interpleader proceedings without directing an issue under Order 57 rule 8 or stating a case under rule 9, the decision is a summary decision: *In re Tarn;*[2] *Bryant* v. *Reading;*[3] *Harbottle* v. *Roberts.*[4] There has been no direction for an issue to be tried, the interpleader summons had been dealt with in a summary manner and leave to appeal was required.

Insofar as the leave of the court is concerned, we reject by reason of the provisions of section 68(3) of the Act any suggestion that the High Court was incorrect in refusing to exercise this discretion it undoubtedly had whether to grant leave or to refuse it or in revoking the leave granted in chambers after fuller consideration of the argument advanced in open court. We are also of the opinion that leave of the court is necessary even when the decision sought to be appealed from is one made by the judge on appeal from the Senior Assistant Registrar. It really is a matter for the discretion of the court from whom leave is sought. In such a matter, it is not the practice of this court to override the discretion of the court below unless it can be shown that that court has exercised its discretion on wrong principles, or has failed to take into consideration relevant matters before it or has taken into account considerations not before it. We have not been advised how the court has erred.

Insofar as the discretion of the court under section 74(1)(a)(iii) of the Act is concerned, it ought to be realised that the matter is fraught with procedural difficulties. If we are persuaded that the considerations that moved the High Court to decide in favour of MIMB and against EAC are fit for appeal, we cannot be oblivious to the fact that the appeal with leave is not from the decision of the Federal Court which has not heard the appeal from the decision of the High Court but is actually concerned with the refusal of the High Court and this court to give leave to appeal from the High Court to the Federal Court. Unless the Privy Council is predisposed to hear the appeal without knowing the views of the Federal Court, the appeal to the Privy Council, if it succeeds, could only mean effectively a direction to the Federal Court to hear the appeal from the High Court.

In all the circumstances of this case, we refuse leave.

Leave refused.

Solicitors: *Chooi & Co.; Shook Lin & Bok.*

LEE AH CHIN v. WONG YOON CHAI

[O.C.J. (Yusoff Mohamed J.) July 26, 1980]
[Johore Bahru — Originating Summons No. 242 of 1977]

Land Law — Foreclosure proceedings — Consequential reliefs for return of document in possession of chargee.

This was an application by a chargor for the consequential reliefs and for the return of his document of title which was in the possession of the chargee. The title to the land was the subject of a charge and foreclosure action had been instituted by the chargee arising from a moneylending transaction. The foreclosure proceedings were dismissed by the court on November 11, 1979. In his affidavit supporting the application, the applicant said that his counsel through inadvertence had failed to apply for these consequential orders resulting from the dismissal of action.

Held: (1) as the chargee did not lodge any appeal against the dismissal of the foreclosure proceedings and the order was extracted on December 13, 1979 this puts an end to the litigation;

(2) in the circumstances the reliefs sought by the chargor must be granted in terms.

ORIGINATING SUMMONS.

Mohamed Elyas Majeed for the applicant.

T.S. Chong for the respondent.

Yusoff Mohamed J.: In this summons the applicant/chargor applied for the consequential reliefs and for the return of his document of title C.T. 8320, Lot 5688 Mukim of Senai, Kulai which was in the possession of the respondent/chargee. The title to the land was the subject of a charge and foreclosure action instituted by the respondent/chargee arising from a moneylending transaction. The foreclosure proceedings were dismissed by the court on November 11, 1979.

In his affidavit supporting the application, the applicant said that his counsel through inadvertence had failed to apply for these consequential orders resulting from the dismissal of action.

The application was opposed by the respondent/chargee. In his affidavit in opposition he contended

that his foreclosure action had been dismissed on a point of law and that he was advised that he was entitled to restitution of the sum of $12,693.50, the amount originally lent to the applicant/chargor by virtue of section 66 of the Contract Act, 1950 (Revised 1974). He also contended that his counsel had raised the issue of restitution at the hearing of the foreclosure action and he was advised to say that the present application was bad in law and should be struck out.

It is apparent from the deposition of the respondent/chargee that the matter of restitution is *res judicata* and this court has no jurisdiction to reopen the issue for further arguments. The record also reveals that consequent to the dismissal of his action the respondent/chargee applied for further argument of the case pursuant to Order 54 rule 22 of the Rules of the Supreme Court. That application was refused by the judge and the necessary certificate was issued on November 15, 1979. The respondent/chargee did not lodge any appeal and the order was extracted on December 13, 1979, which puts an end to the litigation. Obviously the respondent/chargee was satisfied with the decision of the court at the time or his counsel had advised him not to proceed further in which case applicant/chargor would be entitled to the reliefs sought.

In perusing the applicant's/chargor's affidavit sworn on March 5, 1978 which was referred to in his present affidavit supporting this application it was there contended that he had settled the whole of the respondent's/chargee's claim. This contention at paragraph 8 of the affidavit was marked 'X' by the judge who dealt with the case. It was obvious that the judge had considered this contention when the issue of restitution was argued before him, when in any event he decided to dismiss the whole action.

In these circumstances, the reliefs sought by the applicant/chargor are granted in terms.

Order accordingly.

Solicitors: *Mohamed Elyas Majeed; Chong Thian Seng.*

DIRECTOR GENERAL OF INLAND REVENUE v. HUI THONG CO. SDN. BHD.

[A.C.J. (Hashim Yeop A. Sani J.) September 26, 1980]
[Kuala Lumpur — Tax Appeal No. 1 of 1980]

Revenue Law — Income Tax — Family company carrying on business as insurance and general agents — Investment in land — Sale of land for profit — Whether adventure in nature of trade — Income Tax Act, 1967, s. 2.

In this case the respondent was a family company carrying on business as insurance and general agents. Subsequently the company began to invest in land for the purpose of obtaining income from rentals. In the course of doing so, the company purchased four vacant lots of land. No steps were taken to erect buildings on the land or to submit building or development plans. The lands were sold at a profit and subsequently the company purchased two blocks of buildings from which it received rental income. The company was assessed to tax on the profits of the sale of the vacant lands but on appeal to the Special Commissioners, it was decided by a majority that the purchase and sale of the lands did not constitute an adventure in the nature of trade. It was held that the transaction constituted a realization of investment and therefore no tax was payable. The Director-General appealed by way of case stated.

Held, dismissing the appeals, in this case the Special Commissioners in their majority decision found that the respondent had acquired landed property and after an interval of time disposed of them and substituted them with some other property which were still giving rental income to the company. Looking at the surrounding circumstances of the transaction and in the absence of any evidence to indicate that the original purchase was solely for speculative purposes, it was quite difficult not to agree with the findings of the Special Commissioners in the majority decision.

Cases referred to:-

(1) *Edwards* v. *Bairstow & Harrison* (1955) 36 T.C. 207.
(2) *International Investment Ltd.* v. *Comptroller-General of Inland Revenue* [1979] 1 M.L.J. 4.
(3) *California Copper Syndicate (Ltd. & Reduced)* v. *Harris* 5 T.C. 165, 166.
(4) *Leeming* v. *Jones* 15 T.C. 333, 340.
(5) *Commissioners of Inland Revenue* v. *Livingston* 11 T.C. 538, 542.
(6) *Commissioners of Inland Revenue* v. *Reinhold* 34 T.C. 389, 394.
(7) *Rutledge* v. *Commissioners of Inland Revenue* 14 T.C. 490, 496.
(8) *Commissioners of Inland Revenue* v. *Reinhold* 34 T.C. 389.

TAX APPEAL.

Zulkifli Ahmad (Federal Counsel) for the appellant.

S. Woodhull (*Ahmad Johari bin Tun Abdul Razak* with him) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This is an appeal by way of Case Stated by the Special Commissioners of Income Tax. The appellant, the Director General of Inland Revenue, is dissatisfied with the majority decision of the Special Commissioners as set out at pages 28-33 of the case stated. In his submission counsel for the appellant relied substantially on the statement of the dissenting decision as set out at pages 11-28 of the case stated.

It is set out in the Deciding Order that the Special Commissioners found, *inter alia,* that —

(a) the appellant before them (the respondent here) is a family company incorporated on December 30, 1953 and commenced business as insurance and general agents;

(b) the main business activity of the said company before 1960 was insurance business but after 1960 the insurance business declined and the company started to invest in houses for the purpose of obtaining income from rentals;

(c) on September 20, 1967 the company entered into four separate agreements with regard to the purchase of four vacant lots of land for a total consideration of $75,000 including the amount for removal of squatters;

(d) these vacant lots which were subdivided by the vendor were situated in the area of Jalan Masjid India, Kuala Lumpur, and formed part of a proposed development complex;

(e) the final payment for the purchase of these lots was made in February, 1971 and separate docu-